

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

GRANT BIRCHMEIER, et al.,	}	
Plaintiffs,		Docket No. 12 C 4069
vs.		
CARIBBEAN CRUISE LINE, INC.,		Chicago, Illinois
et al.,	}	August 7, 2013
Defendants.		9:50 a.m.

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE MATTHEW F. KENNELLY

APPEARANCES:

For the Plaintiff: LOEVY & LOEVY  
BY: MR. SCOTT R. RAUSCHER  
312 North May Street, Suite 100  
Chicago, Illinois 60607

EDELSON LLC  
BY: MS. EVE-LYNN J. RAPP  
350 North LaSalle Street  
Suite 1300  
Chicago, Illinois 60654

For the Defendant: GREENSPOON MARDER, P.A.  
BY: MR. JEFFREY BACKMAN  
200 East Broward Boulevard  
Suite 1500  
Fort Lauderdale, Florida 33301

MC GUIRE WOODS, LLP  
BY: MR. BRIAN P. O'MEARA  
77 West Wacker Drive  
Suite 4100  
Chicago, Illinois 60601

LAURA M. BRENNAN - Official Court Reporter  
219 South Dearborn Street - Room 2102  
Chicago, Illinois 60604  
(312) 435-5785

1 (The following proceedings were had in open court:)

2 THE CLERK: Case 12 C 4069, Birchmeier v. Caribbean  
3 Cruise Lines.

4 THE COURT: Good morning.

5 MR. RAUSCHER: Good morning, your Honor; Scott  
6 Rauscher and Eve-Lynn Rapp for plaintiffs.

7 MR. BACKMAN: Good morning, your Honor; Jeff Backman  
8 for Caribbean Cruise Line and Vacation Ownership Marketing  
9 Tours.

10 MR. O'MEARA: Good morning, your Honor; Brian O'Meara  
11 on behalf of the defendant The Berkley Group.

12 THE COURT: Is this everybody we're supposed to have,  
13 or are we missing people?

14 MR. RAUSCHER: We have someone for everyone.

15 THE COURT: Everyone, all right.

16 So why don't you give me a report on the status and I  
17 will let other people fill in.

18 MR. RAUSCHER: Sure.

19 We are proceeding with discovery. We took the first  
20 deposition last week. We have three 30(b)(6), one that each  
21 of the defendants scheduled for next week, a couple other of  
22 the more survey-related people scheduled for -- hopefully  
23 scheduled for the end of August. I hope we're on track. I  
24 think we're on track for a class cert brief on September 6th.

25 THE COURT: Okay.

1 MR. RAUSCHER: I think there is an issue, and I will  
2 let Mr. Backman speak to it. I think he's going to ask for  
3 briefing on the issue that we had to call about during the  
4 deposition that may slow things down.

5 THE COURT: And I'm already blanking on what it was.

6 MR. RAUSCHER: We wanted to probe into at least our  
7 complaint. Most of the allegations in our complaint are about  
8 political surveys.

9 THE COURT: Oh, right, right, right.

10 MR. RAUSCHER: We mentioned four other names of  
11 surveys that we believe are nonpolitical. So we wanted to be  
12 able to probe about that, and your Honor said we could during  
13 the deposition. I believe Mr. Backman wants to argue and  
14 brief that further.

15 THE COURT: Okay. Did you go ahead and ask the  
16 questions?

17 MR. RAUSCHER: We did ask the question during that  
18 deposition. We have a 30(b)(6) --

19 THE COURT: Oh, but it's going to come up again is  
20 what you're saying. All right.

21 MR. BACKMAN: That's right, your Honor. I mean, I  
22 think that adequately paints the picture of what we're asking  
23 for.

24 Based on the pleading that we have in front of us, we  
25 consider this case, with respect to the liability of Caribbean

1 Cruise Line, Vacation Ownership Marketing Tours,  
2 which are my clients, to be based solely on an alleged scam or  
3 front using this other company, Political Opinions of America,  
4 under the guise of the First Amendment, to make political  
5 survey telephone calls really for purposes of telemarketing on  
6 behalf of my client. Without Political Opinions of America  
7 and this alleged scam and front that the plaintiffs allege,  
8 there would be no liability in this case against our  
9 particular clients. The four named class representatives all  
10 specifically allege that they got calls by or on behalf of  
11 Political Opinions of America, not some other entity.

12 So as far as we're concerned, that's what this case  
13 is about. That's what it should be limited to. Call it a --

14 THE COURT: Let me ask you this because you're going  
15 to argue all of this to me, I'm guessing, in writing. So I  
16 would say just save it for that.

17 How is this going to get teed up for me, that's my  
18 question, and when?

19 MR. BACKMAN: We have responded to all of their  
20 discovery which included requests for this other marketing  
21 campaign information. They are free to move to compel. If  
22 your Honor prefers that we file some sort of motion for  
23 protective order or to limit or something of that nature,  
24 we're happy to --

25 THE COURT: Okay. So let me just say this. And I

1 need to see the transcript of exactly what was discussed in  
2 the deposition. So let me just say, before I forget it, if  
3 anybody files any kind of a motion on this, somebody give me  
4 that part of the transcript, just so I can refresh your  
5 memory.

6 I guess what I would say to you is if the way this  
7 gets teed up is that I get another call from a deposition, I'm  
8 probably going to make the same ruling I did before. So if  
9 somebody wants me to do something different or wants me to  
10 deal with it before that, then I guess, you know, get  
11 something on file so that I can set a briefing schedule. I  
12 don't really care who does it. You know, people can have  
13 strategic reasons for doing or not wanting to do it. I'm just  
14 going to leave that in your hands. I will rule on something  
15 when I get something to rule on. Okay.

16 MR. BACKMAN: Thank you, your Honor.

17 MS. RAPP: Thank you, your Honor.

18 THE COURT: So the deadline for the class cert brief  
19 is the 6th of September, but we have got the whole schedule in  
20 place. So I don't need to see you. I'm going to just have  
21 another status in mid-October, just to kind of check on  
22 things.

23 So, Pam, just pick a date out in mid-October some  
24 time.

25 THE CLERK: October 9th.

1 THE COURT: Does that date work okay?

2 MR. RAUSCHER: It does, your Honor.

3 MR. BACKMAN: It's fine with us.

4 THE COURT: All right.

5 MR. BACKMAN: Your Honor, if I may, I would like to  
6 avoid the issue coming up at the deposition, and I'm happy --

7 THE COURT: When is the deposition?

8 MR. BACKMAN: Monday. So I'm happy to file a --

9 THE COURT: It ain't going to happen between now and  
10 Monday because I'm going to be out of town the next two days.

11 MR. BACKMAN: Exactly, so that's my concern.

12 So we're happy to tee it up and brief it from that  
13 perspective on behalf of the defendants, but I would ask that,  
14 to the extent that we can move forward -- they went ahead and  
15 they asked a lot of questions. There's a lot to be asked  
16 about this particular survey and these folks that were  
17 involved.

18 So I think what we would like to do is avoid the  
19 issue coming up at the deposition. We'll go ahead and file  
20 our motion, and to the extent your Honor rules that other  
21 marketing campaigns can be probed into, we can make our rep  
22 available for that limited purpose after a ruling is made.

23 THE COURT: Where is this deposition happening?

24 MR. BACKMAN: In Florida.

25 THE COURT: So he would have to go back down to

1 Florida then. If you're willing to pay for all of that, then,  
2 okay.

3 MR. BACKMAN: Your Honor, we're willing to bring him  
4 up here.

5 THE COURT: Because, I mean, I've made a ruling on  
6 the topic, okay. As I said, there is no reason to think my  
7 ruling is going to change unless you convince me otherwise,  
8 and you're not going to convince me otherwise before Monday  
9 because I'm not going to be able to deal with it before Monday.

10 MR. BACKMAN: Understood.

11 THE COURT: So if you want some other arrangement, in  
12 other words, where this topic gets held out so that you have a  
13 chance to brief it, honestly, you have to pay for that. And  
14 so my suggestion is you see if you can work out something like  
15 that that, you know, if you try that and lose, you're going to  
16 pay for Mr. Rauscher to go back down there and, you know, the  
17 extra time that it costs and the expense that it costs and  
18 whatnot. If you can't work that out, then don't assume it's  
19 going to be anything different. And I will not have time for  
20 you on Monday because I am starting a jury trial.

21 MR. BACKMAN: Understood.

22 THE COURT: So I'm tied up all day.

23 MR. BACKMAN: And I'm happy to bring my corporate rep  
24 up here if it comes to that.

25 THE COURT: Well, see if you can work something out.



1 Maybe you can.

2 MR. BACKMAN: Thank you, your Honor.

3 THE COURT: All right, take care.

4 MR. O'MEARA: Thank you.

5 MS. RAPP: Thank you.

6

7 (Which were all the proceedings had in the above-entitled  
8 cause on the day and date aforesaid.)

9

10 C E R T I F I C A T E

11

12 I hereby certify that the foregoing is a true and  
13 correct transcript of the above-entitled matter.

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16 /s/ *Laura M. Brennan*

September 25, 2013

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Laura M. Brennan  
Official Court Reporter  
Northern District of Illinois

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Date

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